THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT APPEAL NOs.94, 101, 456, 510, 515, 517, 665, 683,
&
914 and 1128 OF 2006.

Dated 9th March, 2007.

WRIT APPEAL No.94 OF 2006 and Batch:

Between:

1. The Government of Andhra Pradesh, represented by its Secretary, Higher Education (CE.II.s) Department, Secretariat, Hyderabad and another.

...Appellants.

And:

1. Raju Bolla, son of Chandraiah, 27 years, Lecturer in Botonyi (On Contract Basis), ABV Degree College, Janagaon, Warangal District and another.

...Respondents.

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AND
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ORDER: (Per Hon'ble Sri Justice B. Prakash Rao)

Since all these appeals arise out of a common order passed in a batch of writ petitions and the issue involved in all the appeals, is one and the same, they are being disposed of by a common order.

Heard the leaned G.P. for Higher Education on behalf of the appellant, Sri Siva, Sri M.Ramgopalrao, Sri J.Kanakaiah and Sri

G.Vidyasagar, the learned counsel appearing on behalf of the respondents-writ petitioners in all the appeals. All these appeals are preferred at the instance of the Government against the common order passed in W.P.Nos.5786 of 2003 and batch which are filed by the writ petitioners seeking a direction to declare the actions of the respondents therein in taking over the management of the A.B.V. Degree College, Janagoan from 1.4.2003 by G.O.Ms.No:10 HE dated 12.3.2003 without absorbing the petitioners on the ground that they are working in unaided post in spite of extracting work for nearly 15 years and seeking to terminate their services under condition 5 of paragraph-4 of the G.O. as illegal and to hold that the petitioners are entitled to be absorbed/regularized in terms of G.O.Ms.No:328, dated 15.10.1997 with all consequential benefits.

The facts of the case in a nut shell are that admittedly, these two colleges in question are being run under the private management and they were sought to be taken over by the Government under the aforesaid two different G.Os., of the vent date in exercise of the powers under Section 60 of the A.P. Education Act, 1982. One of the conditions i.e., condition No:5 as stipulated in the G.O. in question, specifies that no member in teaching and non-teaching in unaided posts shall be taken over. The conditions as stipulated in G.O.Ms.No.10 dated 12-3-2003, read as under:

1. *All assets of movable and immovable should be handed over to the Government without payment of any compensation.*

2. *Surplus staff (teaching and non teaching) shall be transferred to needy Government Degree Colleges, in the same zone.*

3. *All the teaching and non-teaching staff working in Madhu Malancha Degree College have to take last ranks after taken over and there will be no right to*

them to claim seniority in future.

4. There shall be no additional financial commitment to Government either now or in future.

5. No member in teaching and non-teaching in unaided posts shall be taken over.

6. *The liabilities, if any, also be settled by the society, before the taken over of the college.*

The writ petitioners in W.P.No.5786, 14992, 5491, 5717, 7760 and 7398 of 2003 are working as part time lecturers in A.B.V. Degree College whereas the petitioners in W.P.Nos.5425 and 5412 of 2003 are working in Madhu Malancha Educational Society, in unaided posts.

Though the selection was made by a properly constituted selection committee, the petitioners were appointed as part time/contract lecturers. Irrespective of the fact as to the date of appointment as well as length of service of each of the petitioners, the fact that remains undisputed is that that they have been in such service for a quite long time.

It is their further contention that though their appointment is temporary in nature as in unaided posts but they do form part of the assets and staff of the institutions which are taken over by the Government and therefore, there cannot be any discrimination among the employees in absorbing them.

Thus the main plank on which the writs were sought to be pursued was on the basis of a clear discrimination among the employees, which is violative under Article 14 of the Constitution of India. According to them, there is absolutely no distinction between these two sets.

However, ultimately, the stand taken by the appellants herein, is that the Government has directed the Andhra Pradesh

State Council of Higher Education to formulate a suitable proposal for evolving a policy with regard to admission of unaided colleges (Degree/Junior) opened on or before 31-12-1990 i.e., pre-liberalization period and unaided Sections in aided colleges (Degree/Junior) to grant-in-aid and related matters like counting of unaided service for fixation of pay etc.,

During the pendency of the writ petitions, in the Review Meeting on Higher Education held on 17-02-2005, the issue as to the regularization of part time lecturers was discussed. The Government has constituted a committee with certain members to examine the issue of regularization of services of part time lecturers working in the private aided degree/junior colleges and the committee submitted its report to the Government.

The learned single Judge on a consideration of the submissions and placing the reliance on the principles laid down in WELFARE ASSN. V. RANJIT P. GOHIL [[1]], held that there is clear discrimination amongst these two sets of employees. Therefore, it was held that the said clause is arbitrary and illegal being violative of Article 14 of Constitution of India. It is also made clear in the order impugned that since the policy decision has to be taken over by the Government to regularize the services of part time lecturers in the aided posts, the petitioners shall be continued in the posts in which they are working on the same terms and conditions as existed as on the date of taking over the college subject to the availability of vacant posts and subject to the continuation of science faculty in those colleges and also subject to the availability of work. Having aggrieved by the same, the present appeals are preferred.

On a consideration of the rival submissions made from both sides, the points that primarily crop up for consideration in these

two appeals are:

1. *Whether under the facts and circumstances, the classification of the employees in aided and unaided posts is valiative of Article 14 of the Constitution of India; and*

2. *Whether the petitioners are having any enforceable right to claim for any continuation of their services on taking over of the colleges by the State in pursuance of the powers conferred under Section 60 of the A.P. Education Code, 1982?*

Coming to the first aspect, it has to be seen that there is no dispute in regard to the employees who are appointed and working in the aided posts and with regard to their continuation even after they were taken over by the Government under the said impugned G.Os.

However, in so far as the employees who have been appointed as a temporary/contract basis in unaided posts are concerned, nothing has been brought to our notice on behalf of the petitioners to show any involvement or to have a say in regard to the appointment or the process.

Admittedly, though all these appointments are made through a selection process but the same are at the instance of the respective private management rather than with the intervention of the Government or any assistance as that of the aided posts. Therefore, the entire process involves a direct relationship between the management and such employees and therefore, nothing can be attributed as against the Government.

In fact, it is also brought to our notice that by specific orders issued, the respective managements have been allowed to make such appointments at their instance. In this regard, a reference is also made in G.O.Ms.No.1422 Education (CE1) Department dated 22-10-1987 permitting the management to make ad hoc part time

arrangements.

Even otherwise, it is not the case on behalf of the writ petitioners that their services were at any time meted with in any manner whatsoever in nature since its inception by the Government nor there is any financial assistance in payment of salaries to such employees. Therefore, it cannot be said that such part time employees or those who are appointed in unaided posts can in any way put on par with those who are working in aided posts. Apart from the payment of salaries and assistance given therefor, their appointments in aided posts are regular one and well protected whereas in case of the part time lecturers and employees in unaided posts, no such protection is available under law.

In a decision reported in SECRETARY, STATE OF KARNATAKA AND ORS. V. UMADEVI AND ORS. [[2]], the Apex Court while considering the claims of such temporary employees has held that such employees do not have any right to have a regular or permanent public employment.

In the latest decision reported in INDIAN COUNCIL OF AGRICULTURAL RESEARCH & ANOTHER ([[3]]) following the aforesaid decision 2nd cited (SECRETARY, STATE OF KARNATAKA AND ORS. V. UMADEVI AND ORS.), it was held again that conferment of temporary status would not bring such employee on to permanent establishment. Therefore, there cannot be any direction for regularization.

A Division Bench of this Court in DR. A.V.S.S. PRASAD AND OTHERS v. DIRECTOR, NATIONAL INSTITUTE OF TECHNOLOGY (REGIONAL ENGINEERING COLLEGE), WARANGAL AND ORS.) ([[4]]) while considering the very same

aspect has reiterated as under:

> *"Posts of lecturers in regional engineering college renamed as National Institute of Technology –Appellants appointed on ad hoc basis seeking regularization of their services – Single Judge in writ petitions rejected the said prayer – However, direction given for continuance of their ad hoc appointments till the availability of regularly selected candidates – Applications invited for appointment on ad hoc basis and not on regular basis – After selection, appointments made as ad hoc lecturers on contract basis for a period of one year in the first instance on a consolidated salary – Petitioners joined service fully knowing that their appointment was only on ad hoc basis – No legitimacy in their claim to be treated as regularly appointed and for regularization of their services – Large number of meritorious candidates would not apply for ad hoc posts because of uncertainty of tenure of appointment – Selection to such ad hoc posts would be made by mediocres – Acceptance of prayer of such employees for regularization would be detrimental to larger public interest and deprive more meritorious candidates of their right for regular appointment – Such acceptance would violate doctrine of equality in the matter of employment and philosophy that every citizen should strive towards excellence in all spheres – Appellants cannot therefore be treated to have been regularly appointed – Nor can they seek a direction for regularization of their services."*

Therefore, from the above decision, it is quite apparent and there cannot be any difference of opinion with regard to the fact that such employees on a temporary appointment or in the unaided posts, cannot be termed to be put under the same jargon as that of aided posts.

Point No:1 is answered accordingly in favour of the appellants.

Coming to the second aspect i.e., in regard to the direction given by the learned single Judge to continue the writ petitioners till a policy decision is taken with regard to the regularization of the part time lecturers in the aided posts, no doubt, the learned counsel appearing on behalf of the appellants has pointed out that

the Government has taken a decision by issuing a G.O. Ms. No.35 (HIGHER EDUCATION (CE.II-I) DEPARTMENT), dated 27-03-2006 and therefore, they cannot be continued. However, on a reading of the said G.O., it is quite clear that the said decision is exclusively only in regard to the filling up of vacant aided posts and the same does not touch as the employees who are working on temporary/contract basis in unaided posts. Therefore, it can easily be inferred that the said G.O. would not come to the rescue of the petitioners for regularization of their services.

It is brought to our notice that though there is an amendment to the provisions of Andhra Pradesh Educational Institutions (Establishment, Recognition, Administration and Control of schools under private managements) Rules, 1993 but, as per sub-rule 7, the Educational Agency shall be free to appoint an employee/staff to an un-aided post subject to the condition that they have the prescribed qualification to hold the such posts. The service conditions of un-aided teaching and non-teaching staff shall be contractual in nature between the educational agency concerned and the appointee. But, in our considered opinion, the aforesaid rules are purely confined to the administration of the schools but not to that of the colleges.

In the present facts and circumstances of the case and the principles laid down by the Apex Court in the decision reported in SECRETARY, STATE OF KARNATAKA AND ORS. V. UMADEVI AND OTHERS (CITATION 2ND SUPRA), We feel that the writ petitioners have absolutely no enforceable right, whatsoever, in nature to lay any claim or to challenge the same by invoking the jurisdiction of this Court under Article 227 of the Constitution of India.

In this view of the matter, We have no hesitation to hold that

the direction as to the continuation of the writ petitioners till a policy decision is taken, is outside the purview and scope of the powers that are conferred under Article 226 of the Constitution of India.

Point No:2 is also answered in favour of the appellants.

In view of the findings on point Nos.1 and 2, We are of the opinion that the order impugned is liable to be set aside.

Accordingly, the appeals are allowed setting aside the order impugned and consequently, the writ petitions filed by the writ petitioners are hereby dismissed. No costs.

However, it is made clear that the appellants are at liberty to proceed against the writ petitioners in accordance with law.

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Justice B. PRAKASH RAO

Dated 9th March, 2007.

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Justice RAMESH RANGANATHAN

Note:
L.R. Copy be marked.

//B.O.//

Dvs

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT APPEAL NO.94 OF 2006 AND BATCH

Dated 9th March, 2007.

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[1] 2003 (9) SCC 358

[2] (2006) 4 SCC PAGE No. 1

[3] 2006 AIR SCW 6041

[4] 2006 (5) ALT 732 (D.B.)